

(h) Where a form of prospectus filed pursuant to Rule 424(b) relating to an offering does not include disclosure of omitted information regarding the terms of the offering, the securities, or the plan of distribution, or selling security holders for the securities that are the subject of the form of prospectus, because such omitted information has been included in periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 incorporated or deemed incorporated by reference into the prospectus, the issuer shall file a form of prospectus identifying the periodic or current reports that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement that contain such omitted information. Such form of prospectus shall be required to be filed, depending on the nature of the incorporated information, pursuant to Rule 424(b)(2), (b)(5), or (b)(7).

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S-K.

NOTE TO RULE 430B: The provisions of paragraph (b) of Rule 401 (§230.401(b)) shall apply to any prospectus filed for purposes of including information required by section 10(a)(3) of the Act.

[70 FR 44813, Aug. 3, 2005, as amended at 73 FR 969, Jan. 4, 2008]

§ 230.430C Prospectus in a registration statement pertaining to an offering other than pursuant to Rule 430A or Rule 430B after the effective date.

(a) In offerings made other than in reliance on Rule 430B (§230.430B) and other than for prospectuses filed in reliance on Rule 430A (§230.430A), information contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b) (§230.424(b)) or Rule 497(b), (c), (d), or (e) (§230.497(b), (c), (d) or (e)), shall be deemed to be part of and included in the registration statement on the date it is first used after effectiveness.

(b) Notwithstanding paragraph (a) of this section or paragraph (a) of Rule 412 (§230.412), no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by ref-

erence into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(c) Nothing in this section shall affect the information required to be included in an issuer's registration statement and prospectus.

(d) Issuers subject to paragraph (a) of this section shall furnish the undertakings required by Item 512(a) of Regulation S-K (§229.512(a) of this chapter) or Item 34.4 of Form N-2 (§§239.14 and 274.11a-1 of this chapter), as applicable.

[70 FR 44815, Aug. 3, 2005, as amended at 73 FR 969, Jan. 4, 2008]

§ 230.431 Summary prospectuses.

(a) A summary prospectus prepared and filed (except a summary prospectus filed by an open-end management investment company registered under the Investment Company Act of 1940) as part of a registration statement in accordance with this section shall be deemed to be a prospectus permitted under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)) if the form used for registration of the securities to be offered provides for the use of a summary prospectus and the following conditions are met:

(1)(i) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories; or

(ii) The registrant is a foreign private issuer eligible to use Form F-2 (§239.32 of this chapter);

(2) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 or has a class of equity securities registered pursuant to section 12(g) of that Act or is required to file reports pursuant to section 15(d) of that Act;

(3) The registrant: (i) Has been subject to the requirements of section 12 or 15(d) of the Securities Exchange Act

of 1934 and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of that Act for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement; and (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) under the Securities Exchange Act of 1934 (§ 240.12b-25 of this chapter) with respect to a report or portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that Rule; and

(4) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries has, since the end of its last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934: (i) failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted on any installment or installments on indebtedness for borrowed money, or on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(b) A summary prospectus shall contain the information specified in the instructions as to summary prospectuses in the form used for registration of the securities to be offered. Such prospectus may include any other information the substance of which is contained in the registration statement except as otherwise specifically provided in the instructions as to summary prospectuses in the form used for registration. It shall not include any information the substance of which is not contained in the registration statement except that a summary prospectus may contain any information specified in Rule 134(a) (§ 230.134(a)). No reference need be made to inapplicable

terms and negative answers to any item of the form may be omitted.

(c) All information included in a summary prospectus, other than the statement required by paragraph (e) of this section, may be expressed in such condensed or summarized form as may be appropriate in the light of the circumstances under which the prospectus is to be used. The information need not follow the numerical sequence of the items of the form used for registration. Every summary prospectus shall be dated approximately as of the date of its first use.

(d) When used prior to the effective date of the registration statement, a summary prospectus shall be captioned a "Preliminary Summary Prospectus" and shall comply with the applicable requirements relating to a preliminary prospectus.

(e) A statement to the following effect shall be prominently set forth in conspicuous print at the beginning or at the end of every summary prospectus:

"Copies of a more complete prospectus may be obtained from" (Insert name(s), address(es) and telephone number(s)).

Copies of a summary prospectus filed with the Commission pursuant to paragraph (g) of this section may omit the names of persons from whom the complete prospectus may be obtained.

(f) Any summary prospectus published in a newspaper, magazine or other periodical need only be set in type at least as large as 7 point modern type. Nothing in this rule shall prevent the use of reprints of a summary prospectus published in a newspaper, magazine, or other periodical, if such reprints are clearly legible.

(g) Eight copies of every proposed summary prospectus shall be filed as a part of the registration statement, or as an amendment thereto, at least 5 days (exclusive of Saturdays, Sundays and holidays) prior to the use thereof, or prior to the release for publication by any newspaper, magazine or other person, whichever is earlier. The Commission may, however, in its discretion, authorize such use or publication prior to the expiration of the 5-day period upon a written request for such authorization. Within 7 days after the

Securities and Exchange Commission

§ 230.433

first use or publication thereof, 5 additional copies shall be filed in the exact form in which it was used or published.

[47 FR 11440, Mar. 16, 1982, as amended at 47 FR 54770, Dec. 6, 1982; 63 FR 13984, Mar. 23, 1998; 76 FR 71876, Nov. 21, 2011]

§ 230.432 Additional information required to be included in prospectuses relating to tender offers.

Notwithstanding the provisions of any form for the registration of securities under the Act, any prospectus relating to securities to be offered in connection with a tender offer for, or a request or invitation for tenders of, securities subject to either § 240.13e-4 or section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)) must include the information required by § 240.13e-4(d)(1) or § 240.14d-6(d)(1) of this chapter, as applicable, in all tender offers, requests or invitations that are published, sent or given to security holders.

[64 FR 61451, Nov. 10, 1999]

§ 230.433 Conditions to permissible post-filing free writing prospectuses.

(a) *Scope of section.* This section applies to any free writing prospectus with respect to securities of any issuer (except as set forth in Rule 164 (§ 230.164)) that are the subject of a registration statement that has been filed under the Act. Such a free writing prospectus that satisfies the conditions of this section may include information the substance of which is not included in the registration statement. Such a free writing prospectus that satisfies the conditions of this section will be a prospectus permitted under section 10(b) of the Act for purposes of sections 2(a)(10), 5(b)(1), and 5(b)(2) of the Act and will, for purposes of considering it a prospectus, be deemed to be public, without regard to its method of use or distribution, because it is related to the public offering of securities that are the subject of a filed registration statement.

(b) *Permitted use of free writing prospectus.* Subject to the conditions of this paragraph (b) and satisfaction of the conditions set forth in paragraphs (c) through (g) of this section, a free

writing prospectus may be used under this section and Rule 164 in connection with a registered offering of securities:

(1) *Eligibility and prospectus conditions for seasoned issuers and well-known seasoned issuers.* Subject to the provisions of Rule 164(e), (f), and (g), the issuer or any other offering participant may use a free writing prospectus in the following offerings after a registration statement relating to the offering has been filed that includes a prospectus that, other than by reason of this section or Rule 431, satisfies the requirements of section 10 of the Act:

(i) Offerings of securities registered on Form S-3 (§ 239.33 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.B.5, I.C., or I.D. thereof;

(ii) Offerings of securities registered on Form F-3 (§ 239.13 of this chapter) pursuant to General Instruction I.A.5, I.B.1, I.B.2, or I.C. thereof;

(iii) Any other offering not excluded from reliance on this section and Rule 164 of securities of a well-known seasoned issuer; and

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S-3 or Form F-3 for primary offerings pursuant to General Instruction I.B.1 of such Forms.

(2) *Eligibility and prospectus conditions for non-reporting and unseasoned issuers.* If the issuer does not fall within the provisions of paragraph (b)(1) of this section, then, subject to the provisions of Rule 164(e), (f), and (g), any person participating in the offer or sale of the securities may use a free writing prospectus as follows:

(i) If the free writing prospectus is or was prepared by or on behalf of or used or referred to by an issuer or any other offering participant, if consideration has been or will be given by the issuer or other offering participant for the dissemination (in any format) of any free writing prospectus (including any published article, publication, or advertisement), or if section 17(b) of the Act requires disclosure that consideration has been or will be given by the issuer or other offering participant for any activity described therein in connection with the free writing prospectus, then a registration statement relating to the offering must have been